SEC. 625. The table of chapters for part I of title 28, United States Code, is amended in the item relating to chapter 11 by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 626. The table of chapters for part III of title 28, United States Code, is amended in the item relating to chapter 55 by striking out "Customs Court" and inserting "United States Court of International Trade".

SEC. 627. (a) The section heading for section 1541 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 93, title 28, United States Code, is amended in the item relating to section 1541 by striking out "Customs Court" and inserting "Court of International Trade".

SEC. 628. (a) The section heading for section 2601 of title 28, United States Code, is amended by striking out "Customs Court" and inserting "Court of International Trade".

(b) The table of sections for chapter 167, title 28, United States Code, is amended in the item relating to section 2601 by striking out "Customs Court" and inserting "Court of International Trade".

TITLE VII—TECHNICAL AND CONFORMING AMENDMENTS

SEC. 701. Section 337(c) of the Tariff Act of 1930 is amended—

(1) by inserting immediately after "Appeals" the following: ", subject to chapter 7 of title 5, United States Code,"; and

(2) by striking out the last sentence and inserting in lieu thereof the following: "Notwithstanding the foregoing, review of commission determinations under subsection (d), (e), and (f) as to it findings on the amount and nature of bond, the appropriate remedy, or the effect of such order on the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and the United States consumers, shall be reviewable only for abuse of administrative discretion.".

SEC. 702. Section 516A(a)(1) of the Tariff Act of 1930 is amended by inserting "or such other time as provided by statute" immediately after "30 days".

SEC. 703. The second sentence of section 516A(c)(2) of the Tariff Act of 1930 is amended to read as follows: "In ruling upon a request for such injunctive relief, the court shall consider the factors set forth in section 2643(e) of title 28, United States Code.".

SEC. 704. The second sentence of section 516A(d) of the Tariff Act of 1930 is amended to read as follows: "The party filing the action shall notify all such interested parties of the filing of an action under this section in the form, manner, style and within the time prescribed by the rules of that court.".

SEC. 705. Section 592(e) of the Tariff Act of 1930 is amended in the introductory paragraph to read as follows:

"(e) COURT OF INTERNATIONAL TRADE AND DISTRICT COURT PROCEEDINGS.—Notwithstanding any other provision of law, in any proceeding commenced by the United States in the Court of International Trade or in a United States district court, under section 604 of this Act for the recovery of any monetary penalty claimed under this section, or transferred from the Court of International Trade to a district court under section 1581 of title 28, United States Code—".

SEC. 706. (a) The second sentence of the second paragraph of paragraph (b) of section 641 of the Tariff Act of 1930 is amended by striking out all that appears after "filing," and before "sixty," and inserting in lieu thereof "in the Court of Customs and Patent Appeals, within".

(b) The second paragraph of section 641(b) of the Tariff Act of 1930 is amended by inserting the following immediately after the third sentence: "For purposes of this paragraph, all relevant rules prescribed in accordance with sections 2072 and 2112 of title 28, United States Code, apply to the Court of Customs and Patent Appeals.".

SEC. 707. (a) Section 250(a) of the Trade Act of 1974 is amended by striking out "court of appeals for the circuit in which such worker or group is located or in the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Court of International Trade".

(b)(1) Section 250(c) of the Trade Act of 1974 is amended by inserting the following immediately after the first sentence: "The judgment of the Court of International Trade shall be subject to review by the United States Court of Customs and Patent Appeals as prescribed by the rules of the Court of Customs and Patent Appeals.".

(2) Section 250(c) of the Trade Act of 1974 is further amended by striking out "court" the second time it appears and inserting in lieu thereof "Court of Customs and Patent Appeals".

SEC. 708. Section 518(a) of title 28, United States Code, is amended by inserting "and in the Court of International Trade" immediately after "Claims".

SEC. 709. Section 751 of title 28, United States Code, is amended by adding at the end thereof the following:

"(f) When the Court of International Trade is sitting in a judicial district other than the Southern and Eastern Districts of New York, the clerk of that district court or an authorized deputy clerk, upon the request of the chief judge of the Court of International Trade and with the approval of that district court, shall act in the district as clerk of the Court of International Trade in accordance with the rules and orders of the Court of International Trade for all purposes relating to any case pending before the court.".

SEC. 710. Section 1331(a) of title 28, United States Code, is amended by adding at the end thereof the following: "The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade.".

SEC. 711. Section 1337 of title 28, United States Code, is amended by adding at the end thereof the following:

"(c) The district courts shall not possess jurisdiction under this section over any matter within the exclusive jurisdiction of the Court of International Trade.".

SEC. 712. Section 1355 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title.".

SEC. 713. Section 1356 of title 28, United States Code, is amended by adding at the end thereof the following: "The Court of International Trade shall have jurisdiction of any such action or proceeding commenced in such court under section 1582 of this title.".

SEC. 714. The second paragraph of section 1491 of title 28, United States Code, is amended by inserting "within the exclusive jurisdiction of the Court of International Trade, or" after "suits" the first time its appears in the first sentence.

SEC. 715. Section 1919 of title 28, United States Code, is amended by inserting "or the Court of International Trade" after "court" the first time in appears.

SEC. 716. Section 1963 of title 28, United States Code, is amended by inserting the following immediately after "district court" the first time it appears: "or in the Court of International Trade".

SEC. 717. The first paragraph of section 2414 of title 28, United States Code, is amended by inserting "or Court of International Trade" after "court" in the first sentence.

SEC. 718. (a)(1) Except as provided in paragraph (2), this Act, and the amendments made by this Act, shall become effective on the date on which title VII of the Tariff Act of 1930, as added by title I of the Trade Agreements Act of 1979, takes effect.

(2) The amendments made by section 586 of this Act shall become effective on October 1, 1980.

(b) Nothing in this Act shall cause the dismissal of any action commenced prior to the date of enactment under jurisdictional statutes relating to the United States Customs Court or the United States Court of Customs and Patent Appeals in effect before the date of enactment of this Act.

(c)(1) Except as provided in paragraph (2), in reviewing any determination made before January 1, 1980, under section 303 of the Tariff Act of 1930 or the Antidumping Act, 1921, the Court of International Trade and the Court of Customs and Patent Appeals shall base its review on the law as it existed on the date of such determination.

(2) The scope of review and procedures for such review shall be governed by the provisions of, and the amendments made by, this Act.

MOTION OFFERED BY MR. VOLKMER

Mr. VOLKMER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. VOLKMER moves to strike out all after the enacting clause of the Senate bill, S. 1654, and to insert in lieu thereof the provisions of H.R. 7540, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. VOLKMER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on H.R. 7540, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Missouri?

There was no objection.

DOCUMENTARY MATERIALS PRIVACY PROTECTION ACT OF 1980

Mr. KASTENMEIER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3486) to limit governmental search and seizure of materials possessed by persons involved in first amendment activities, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Documentary Materials Privacy Protection Act of 1980".

UNLAWFUL ACTS

SEC. 2. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product

materials possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however,* That a government officer or employee may not search for or seize materials described in subsection 2(a) under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C 2277, or 50 U.S.C. 783); or

(2) there is reason to believe that the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being.

(b) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing the materials has committed or is committing the criminal offense to which the materials relate: *Provided, however,* That a government officer or employee may not search for or seize materials described in subsection 2(b) under the provisions of this paragraph if the offense to which the materials relate consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under 18 U.S.C. 793, 18 U.S.C. 794, 18 U.S.C. 797, 18 U.S.C. 798, 42 U.S.C. 2274, 42 U.S.C. 2275, 42 U.S.C 2277, *or 50 U.S.C. 783); or*

(2) there is reason to believe that the immediate seizure of the materials is necessary to prevent the death of or serious bodily injury to a human being; or

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of the materials; or

(4) the materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

In the event a search warrant is sought pursuant to this subparagraph, the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

INAPPLICABILITY OF THIS ACT TO SEARCHES AND SEIZURES CONDUCTED TO ENFORCE THE CUSTOMS LAWS OF THE UNITED STATES

SEC. 3. This Act shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of or at international points of entry into the United States in order to enforce the customs laws of the United States.

REMEDIES

SEC. 4. For violations of this Act by an officer or employee of the United States, there shall be a cause of action against the United States as provided by section 1346(b) and chapter 171 of title 28, United States Code. Remedies against the United States provided by this section shall be the exclusive remedy or sanction, including the Exclusionary Rule.

DEFINITIONS

SEC. 5. (a) "Documentary materials", as used in this Act, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, motion picture films, negatives, video tapes, audio tapes, and other mechanically, magnetically or electronically recorded cards, tapes, or discs, but does not mean contraband, the fruits of a crime, or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(b) "Work product", as used in this Act, means any documentary materials created by or for a person in connection with his plans, or the plans of the person creating such materials, to communicate to the public, except such work product as constitutes contraband or the fruits or things otherwise criminally possessed, or property designed or intended for use or which is or has been used as the means of committing a criminal offense.

(c) "Any other governmental unit," as used in this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

TITLE II. ATTORNEY GENERAL GUIDELINES

SEC. 201. (a) The Attorney General shall, within six months of date of enactment of this Act, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of an offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained.

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship such as that which may exist between clergyman and parishioner; lawyer and client; or doctor and patient; and

(4) a requirement that an application for a warrant to conduct a search governed by this Title be approved by an attorney for the government, except that in an emergency situation the application may be approved by another appropriate supervisory official if within 24 hours of such emergency the appropriate United States Attorney is notified.

(b) The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on the use of search warrants by Federal officers and employees for documentary materials described in subsection (a)(3).

SEC. 202. Guidelines issued by the Attorney General under this Title shall have the full force and effect of Department of Justice regulations and any violation of these guidelines shall make the employee or officer involved subject to appropriate administrative disciplinary action. However, an issue relating to the compliance, or the failure to comply, with guidelines issued pursuant to this Title may not be litigated, and a court may not entertain such an issue as the basis for the suppression or exclusion of evidence.

The SPEAKER pro tempore. Is a second demanded?

Mr. McCLORY. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin (Mr. KASTENMEIER) will be recognized for 20 minutes, and the gentleman from Illinois (Mr. McCLORY) will be recognized for 20 minutes.

The Chair now recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, sometimes a longstanding principle of constitutional jurisprudence is thrown into doubt by a decision of the Supreme Court which—while it may answer a narrow question based on specific facts—leaves Government officials and members of the public in doubt as to how to interpret the law. When this occurs it is often best for Congress to step in to fill the void, rather than to await the results of many years of potential litigation which will again redefine the principle. This is the case with respect to the matter before us today—legislation to redefine a portion of the law of search and seizure in response to the Supreme Court's decision in Zurcher against Stanford Daily in 1978.

Prior to Stanford Daily, the long established interpretation of the fourth amendment had held that a search warrant was considered to meet the constitutional ban on general searches only if the evidence sought constituted contraband, or fruits or instrumentalities of a crime. This rule was modified in 1967 in Warden against Hayden to permit searches for mere evidence, but the facts of that case involved evidence obtained incidental to an arrest.

In the Stanford Daily case the Supreme Court swept away 200 years of jurisprudence greatly limiting searches directed against innocent third parties. The opinion of the Court, delivered by

Mr. Justice White set forth a new theory governing third party searches—identifying the standard to be applied in issuing such warrants as one of "reasonableness." Further, while recognizing that any reasonableness requirement must be established with "scrupulous exactitude," where a newspaper was involved, the Court's opinion did not conclude that the first amendment placed any additional restraints on such searches.

The public and congressional response to the Supreme Court's decision was immediate. Newspaper editorials appeared all over the country condemning the Court's decision. And in Congress numerous members, of every ideological and political stripe, introduced remedial legislation. Meanwhile, the President ordered the Attorney General to study the issue and make a legislative recommendation to him. After consultation with constitutional scholars, civil libertarians, law enforcement authorities, and Cabinet officers, the President recommended H.R. 3486, the bill before us today.

As introduced the bill before you protected third parties from arbitrary searches only where first amendment interests were involved. However, with the exception of the Department of Justice, not a single witness in favor of the legislation testified that the protections of the bill should be limited to the press alone. In fact, the representatives of media organizations were among the strongest proponents of expanding the legislation to protect all innocent third parties from arbitrary search and seizure. A great deal of apprehension was expressed about singling out the press for special treatment.

As a result, when the committee met for markup it was agreed that the legislation should be extended to provide guidance to Federal law enforcement officials as to the circumstances under which search warrants should be used to obtain information from innocent third parties other than those engaged in first amendment activities. However, because of the constitutional and policy implications of regulating the police powers of State and local authorities, the committee decided to limit the applicability of any broader third party provisions of the bill to searches by Federal officials only. Of course, we would hope that State legislatures would follow suit, and indeed eight States have already enacted similar legislation. With respect to searches directed against persons preparing materials for broadcast or publication, we retained the features of the original bill—which apply to State and local as well as Federal officials. The justification involved is the historic obligation of the Federal Government to protect the free speech values of the first amendment.

At this point I should note for Members that the Department of Justice and several of our colleagues opposed the amendment adopted by the committee which appears in its report filed on May 30. While the Attorney General strongly urged us to fill the legal void created by the Stanford Daily case in the first amendment area, he desired more flexibility in developing procedures for searches of other third parties.

However, subsequent to the filing of the committee report we have consulted with representatives of the Department of Justice and worked out an alternative which meets with the full approval of the Attorney General and the Department. That alternative is reflected in the committee amendment which I am offering with the bill today. The essential difference between it and the original reported version is that it makes the decision to apply for a warrant for a third party search an administrative matter to be handled solely within the Department of Justice, acting pursuant to statutory guidelines, rather than a judicial matter, requiring the supervision of the judge issuing the warrant. This is basically the procedure which was approved earlier by the Senate when it passed S. 1790, the counterpart to H.R. 3486. Indeed Mr. Speaker, I hope that with the passage of this committee amendment the Senate may accept the House bill without the necessity of a conference.

In addition to providing for administrative guidelines rather than judicial permission for seeking a third party search warrant, the committee amendment contains several other minor changes in the reported bill.

Finally, we have incorporated the suggestions of the gentleman from Ohio (Mr. KINDNESS) for certain technical and clarifying changes.

Mr. Speaker, this is a reasonable bill. It consists entirely of language drafted or approved by law enforcement officials themselves. It enjoys the support of members of all political persuasions. It is endorsed by groups such as the American Society of Newspaper Editors, the Radio Television News Directors Association, the American Newspaper Publishers Associaton, the American Medical Association, and American Psychiatric Association as well as the ACLU and others. With the committee amendment being offered in conjunction with the bill, I believe it is a noncontroversial bill.

Mr. Speaker, I believe that the committee has acted reasonably to fill the legal void created by the Supreme Court in the Stanford Daily case and urge the the House to approve this historic and much needed legislation.

□ 1600

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, I want to commend the gentleman from Wisconsin (Mr. KASTENMEIER), the subcommittee and the full committee for having produced this very important piece of legislation and also to state that the gentleman from Wisconsin has fairly and accurately and fully explained this legislation.

Mr. Speaker, I rise in support of H.R. 3486, the Documentary Materials Protection Privacy Act. When this bill was reported by the full Judiciary Committee, I strongly opposed it on the basis of section 3 of the bill. Section 3 of the bill would have extended the restrictions on third party searches beyond the area in which first amendment interests are implicated.

Among the primary reasons for opposition to section 3 of the bill by the Justice Department and the law enforcement community were: The difficulty of ascertaining at the early stages of an investigation the identity of all participants in a crime, the probability of destruction or alteration of evidence sought by subpena, the limited availability of subpenas as investigative tools, and the absence of evidence of abuse of existing third party search powers by Federal law enforcement. At the time the Judiciary Committee considered H.R. 3486, I found these to be valid concerns, indeed.

Recently, however, a compromise that is acceptable to the Department of Justice, proponents of section 3, and myself, was reached. Under the compromise, which is embodied in a committee amendment, section 3 would be deleted from the bill and the Attorney General would be mandated to promulgate guidelines to govern searches in the third party area.

H.R. 3486, with section 3 deleted, and a guideline approach adopted in lieu thereof, represents a bill which will provide adequate protection for important privacy rights, while insuring legitimate law enforcement needs. I urge my colleagues to support the passage of H.R. 3486.

Mr. Speaker, I yield such time as he may consume to my colleague, the gentleman from California (Mr. MCCLOSKEY).

□ 1610

(Mr. McCLOSKEY ask and was given permission to revise and extend his remarks.)

Mr. McCLOSKEY. Mr. Speaker, I would like to commend the chairman and members of the Committee on the Judiciary for bringing this bill to the floor in this form. I think it would have been tragic if we had allowed this session of Congress to elapse without resolving the problem that Mr. Justice Stevens referred to in his opinion in the case of the Stanford Daily against Chief Zurcher of Palo Alto.

It is my privilege to represent both the city of Palo Alto and Stanford University. It was significant that in this raid by the Palo Alto Police Department on the editorial offices of the Stanford Daily that the city council of the city of Palo Alto, after winning their case in court, took the position that Congress should amend the law as it is doing in this fashion.

I am sure there are a number of us who would like to extend the protections for the press that are contained in this bill to innocent third parties and perhaps priests and lawyers and doctors who have generally had the privilege against search and seizure of this kind; but in view of the need to have some legislation enacted to protect the press and in view of the other provisions that have been enacted as part of the compromise on the bill, it seems to me that all of us should support the passage of the bill in this form.

Mr. McCLORY. May I say to the gen-

tleman from California that it is contemplated that the guidelines which are mandated by the new section 3 of this legislation, which have been worked out with the Department of Justice, that protection will be provided for the privacy which exists between attorney and client, between patient and doctor, and other rights of privacy which we do want protected. In other words, this is not merely a bill which is directed to the journalists, although we want to protect their interests as well, but we, at the same time, want to be sure that there are no unlawful, unconsitutional searches and seizures, and we expect that the guidelines will protect these constitutional rights of all American citizens.

Mr. McCLOSKEY. I thank the gentleman. I look forward to the formulation of those guidelines by the Attorney General. I hope he will carry on that high tradition which has only recently been established at the Department of Justice.

The SPEAKER pro tempore. Will the gentleman from Wisconsin (Mr. KASTENMEIER) yield to the gentleman from Oregon (Mr. AUCOIN) at this point?

Mr. KASTENMEIER. I yield to the gentleman from Oregon.

REQUEST TO CONSIDER SENATE AMENDMENTS TO HOUSE AMENDMENTS TO S. 1442, AUTHORIZING DOCUMENTATION OF VESSEL "SARA" AS VESSEL OF THE UNITED STATES WITH COASTWISE PRIVILEGES

Mr. AUCOIN. Mr. Speaker, I ask unanimous consent to take from the Speaker's desk the Senate bill (S. 1442) to authorize the documentation of the vessel, *Sara*, as a vessel of the United States with coastwise privileges, with Senate amendments to the House amendments thereto, and agree to the Senate amendments.

The Clerk read the title of the Senate bill.

The Clerk read the Senate amendments to the House amendments, as follows:

Page 3, line 23, of the House engrossed amendment, strike out "berth" and insert "load".

Page 4, line 2, of the House engrossed amendment, strike out "berthing" and insert "loading".

Page 4, after line 4, of the House engrossed amendment, insert:

SEC. 6. Notwithstanding section 27 of the Merchant Marine Act, 1920, as amended (46 U.S.C. 883), or any other provision of law to the contrary, the vessel known as the Scuba King, official numbered 532376, owned by Bernard Despins, shall be entitled to be documented to engage in the fisheries and the coastwise trade upon compliance with the usual requirements, so long as such vessel is, from the date of enactment of this section, continuously owned by a citizen of the United States. For the purposes of this section, the term "citizen of the United States" includes corporations, partnership, and associations, but only those which are citizens of the United States within the meaning of section 2 of the Shipping Act, 1916 (46 U.S.C. 802).

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Oregon (Mr. AUCOIN)?

Mr. McCLOSKEY. Mr. Speaker, reserving the right to object, I wonder if I could ask the gentleman from Oregon to explain what, if any, changes are in the bill from that that passed the House on suspension last August 26?

Mr. AUCOIN. Mr. Speaker, will the gentleman yield?

Mr. McCLOSKEY. I yield to the gentleman from Oregon.

Mr. AUCOIN. Yes; I would be pleased to respond to my friend from California. The other body on September 19, 1980, passed S. 1442 with two changes. The Senate added another vessel to the six named in the bill, the *Scuba King*, which has the same characteristics as the other six vessels that the House included in its legislation.

In addition to that, the Senate changed the priority berthing to priority loading, a change which all agree is necessary so that vessels which have berthing priority will not tie up and occupy scarce dock space before the hold which it has contracted to carry is available for loading. Those are the only changes.

The SPEAKER pro tempore. The Chair would like to advise the gentleman from Oregon (Mr. AUCOIN) that the time now being consumed comes from the time of the gentleman from Wisconsin (Mr. KASTENMEIER).

Is there objection to the request of the gentleman from Oregon (Mr. AUCOIN)?

Mr. DANIELSON. Mr. Speaker, I object.

The SPEAKER pro tempore. Objection is heard.

The Chair now recognizes the gentleman from Wisconsin (Mr. KASTENMEIER).

DOCUMENTARY MATERIALS PRIVACY PROTECTION ACT

Mr. KASTENMEIER. Mr. Speaker, I yield myself 1 minute to express my thanks to the members of the committee who worked on this bill. I refer to some of the amendments which were in fact offered by various members of the full committee and the subcommittee of the Committee on the Judiciary and to indicate as a result of the colloquy between the gentleman from Illinois (Mr. McCLORY) and the gentleman from California (Mr. McCLOSKEY), who was an early proponent of legislation, that indeed section 3 is replaced by title II, Attorney General guidelines. It is quite explicit in terms of what it requires in terms of the development of guidelines. It calls for those guidelines to have the full force and effect of the Department of Justice regulations, and it also calls upon the Attorney General to report annually to the committees of the Congress in terms of this matter so that we will be able to monitor on a year-to-year basis the issuance of such warrants, and whether the procedures are as contemplated.

The SPEAKER pro tempore. The time of the gentleman from Wisconsin (Mr. KASTENMEIER) has expired.

Mr. KASTENMEIER. Mr. Speaker, I yield 4 minutes to the gentleman from California (Mr. DANIELSON).

(Mr. DANIELSON asked and was given permission to revise and etxend his remarks.)

Mr. DANIELSON. Mr. Speaker, I have come to the well reluctantly but necessarily because I oppose this bill. I think it is a bad bill, and I hope that tomorrow when the time comes to vote, it will be defeated.

I have not seen the amendment which the gentleman from Wisconsin refers to. Apparently it is not in print. I did inquire for it earlier this afternoon. So I do not know for sure what it contains.

However, I must therefore address mysel fto the bill as it is in print.

In the first place, I respectfuly submit that we are not here dealing with a question of constitutionality. The Supreme Court of the United States in the case of *Zurcher* v. *Stanford Daily*, 1978, reported at 436 U.S. at 547, found that this search, that this issuance of a warrant, was constitutional. We are not confronted with the issue of constitutionality.

I respectfully submit that if these activities are not unconstitutional, we are here, by this law, diminishing the availability of the search warrant to be used in connnection with the enforcement of our criminal laws.

If these activities were unconstitutional, this bill would not be necessary because we can neither add to, nor subtract from, the Constitution by legislation.

I oppose the purposes of this bill, H.R. 3486, in their entirety. I believe that there should be no special exceptions from the coverage of the fourth amendment for those persons known as the press, nor for anyone else.

The bill would exempt from the reach of search warrants materials in the possession of persons who intend to disseminate the material to the public in some form of public communication, whatever that may be. There are certain limited exceptions.

In my opinion the Congress would be making a gross and unacceptable error if it were to create an elite class of persons, be they press or anyone else, who would enjoy a privileged status under our laws and the Constitution. It is fundamental in our system of justice that no one should be above the law and the Constitution. The Judiciary Committee itself made that point eminently clear when it voted articles of impeachment against former President Nixon. And the Supreme Court of the United States clearly did the same in its decision in the *United States* v. *Nixon*, 418 U.S. 683 (1974).

Those who fear that law enforcement has the right, under present law, to conduct unreasonable and unwarranted excursions into the private papers of the people could well read again the clear and exacting standards for searches which are set forth in the fourth amendment to the Constitution, which provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

And no warrants shall issue, but upon probable cause, supported by oath or affirmation,

And particularly describing the place to be searched, and the persons or things to be seized.

Those standards are high. They insure that the security of the people in their fundamental area of privacy shall not be violated, and that no search warrant can issue unless:

First. The proposed search is reasonable;

Second. There is probable cause;

Third. Supported by oath or affirmation;

Fourth. Describing with particularity;

Fifth. The place to be searched; and

Sixth. The persons or things to be seized.

These are very high standards. They have stood the test of time and trial since 1791; they have been briefed, argued, debated, and refined in numerous decisions of our courts; and they have provided the American people with a degree of security in their persons, homes, papers and effects that has never been equaled in any society.

Further, there are other safeguards which prevent the indiscriminate issuance of search warrants. For instance, we must remember that search warrants are not issued by the law enforcement authorities themselves. Those officers must go to court or a magistrate and apply for the issuance of the warrant. That application must reflect the probable cause and other particulars set forth in the fourth amendment, and it must be supported by oath or affirmation before the court will issue the warrant.

The special elite corps which the bill would protect in its section 2 is indefinable. I submit that very nearly anyone or everyone can reasonably contend that he plans to disseminate the documentary material in his possession to the public in some form of public communication; either now or later. This would certainly apply to anyone who has the intent of ever distributing to the public a newsletter, a mimeographed flyer, some gossip on a radio talk show, or a handbill, as well as to a traditional newspaper.

I respectfully submit that this is bad legislation, and it should be soundly defeated. Its great evils are that it creates an elite corps of persons who would be above the law—a classification to which a responsible and professional newsman should not subscribe; it creates sanctuaries for the concealment of evidence of crime; and it would impose severe and added burdens on law enforcement at a time when the public is crying out for more and more effective enforcement of our laws.

Here are some more of my objections: Who is covered by this bill? I do not know. I have studied it. In section 2(a) it says that—

> It shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or to seize any work product materials possessed by a person.

□ 1620

Possessed by a person—what person? Any person. There is no limitation whatsoever so long as the possession is with a purpose to disseminate to the public a newspaper, book, broadcast, or similar form of public communication.

Well, I respectfully submit, Mr. Speaker, some day I intend to publish my memoirs a fortiori, everything in my files I do intend some day possibly to disseminate to the public in the form of a book, newspaper, broadcast, or other similar form of public communication.

I respectfully submit that that open door is available to anyone who might wish to use it.

Under subsection (b) under section 2, we go beyond "work product" to any documentary material; in fact, specifically "documentary materials, other than work product."

We now open the door completely and bring in everything that is documentary. That is defined later on in the bill to be almost every conceivable sort of thing, whether it be in print, tape, videotape, negative, film, out-take, or interview file; just about anything that is tangible. It is very broad, Mr. Speaker.

I also respectfully point out that this bill has been presented to the House in a somewhat unfortunate manner. The Whip Advisory refers to this as protecting "institutional press." There is nothing in the bill referring to institutional press. But if there were, I do not know how we would define it.

How about poor Tom Paine of our Revolution, who put out a flier once in a while to stir the spirit of freedom in our patriots? Would he qualify as institutional press? I doubt it. I think you and I, Mr. Speaker, and everyone else in this House has put out more press releases than Tom Paine generated in his entire life. Therefore, are we the press? Perhaps we are. If so, if this bill is enacted we cannot be searched, gentlemen.

And this bill, Mr. Speaker, not only prevents seizure, it prevents search. No person can search. He cannot search in a public parking lot. He cannot search anywhere. He simply cannot search. If what he is going after is work product or documentary material, no more search. That is the end of it.

The title of the bill speaks of "first amendment activities," yet the bill seems to be restricted to activities which relate to what is commonly called "the press." The first amendment provides that the Congress shall make no law—

Respecting an establishment of religion;

Or prohibiting the free exercise thereof;

Or abridging the freedom of speech;

Or of the press;

Or the right of the people peaceably to assemble; and

To petition the Government for a redress of grievances.

None of these basic rights is affected by this bill except, inferentially, freedom of the press. After indirectly touching that freedom the bill soars off into the unknown and prohibits all Government officials, Federal State, county, and local, from: First, searching for (no matter where); and second, from seizing, (no matter what the circumstances), documentary material.

I submit that is outrageous that all law enforcement officers are flatly prohibited from searching for documentary materials which are evidence of criminal activity solely because the possessor of them can represent that he has a purpose to disseminate the materials to the public in a "newspaper, book, broadcast, or other similar form of public communication," and then to define "documentary materials" in the broadest possible terms.

I seriously question that the Congress has the naked right to bar the search and seizure activities of non-Federal law enforcement officers in matters that do not violate the Constitution, and clearly the Supreme Court held in Zurcher against Stanford Daily that the events described therein were not unconstitutional. Yet this bill does precisely that, it bars State and local law enforcement officers from conducting searches for seizures of documentary evidence.

It has also been argued that the Supreme Court decision in Zurcher sets up a "new standard, of reasonableness." I submit, Mr. Speaker, that there is nothing new about that standard, it is as old as the fourth amendment itself. That amendment requires, we will remember, that—

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

Stating that the standard is "reasonable" is only the affirmative form of stating that the searches shall not be "unreasonable." Lastly, this bill is preferential in nature in that it favors unreasonably one class of persons over many others who are similarly situated. It is 180 degrees the opposite of "equality before the law."

I urge the defeat of this bill.

(Mr. DANIELSON asked and was given permission to revise and extend his remarks.)

Mr. McCLORY. Mr. Speaker, I yield myself such time as I may consume.

It is true that the bill comes to the floor in a slightly different form than it emerged from the Committee on the Judiciary as a result of this amendment; but the result of the amendment, it seems to me, is to assure that the law enforcement agencies will continue to have the kind of authority which they require in connection with searches and seizures, which are in pursuance of enforcement of suspected criminal activity.

As a substitute for the elimination of the paragraph which would have limited the law enforcement authority in this area, there is a new section being added which specifies that the Attorney General shall within 6 months of the date of enactment of the act provide guidelines which would be a directory of Federal officers who feel that documentary materials which are in private possession are essential and are important to have in connection with the criminal prosecution.

It seems to me that those of us who objected to the provisions which would have limited law enforcement agencies are satisfied that this provision authorizing the establishment of guidelines is an adequate answer and will protect the law enforcement community. At least, that is my feeling and that is my expectation.

I do not want to do anything to limit or restrict full and fair law enforcement.

I think that this legislation would not do that.

At the same time, it does seem that there was a public concern as a result of the search carried out in connection with the Stanford Daily situation. This would provide for the issuance of subpenas and not search warrants in connection with that kind of an investigation, that kind of a requirement or desire for documentary evidence.

So I have the feeling that the legislation is in good shape now and does respond to the needs of the law enforcement community, at the same time protecting the constitutional interests of the private citizen. I believe that the measure should be overwhelmingly passed.

(Mr. McCLORY asked and was given permission to revise and extend his remarks.)

Mr. KASTENMEIER. Mr. Speaker, I yield myself such time as I may consume.

Mr. DANIELSON. Mr. Speaker, would the gentleman yield for a question?

Mr. KASTENMEIER. I yield for a question.

Mr. DANIELSON. What is the nature of the amendment which apparently accompanies the bill; would the gentleman state, so that the record will reflect it?

Mr. KASTENMEIER. The amendment consists of striking section 3 which was objected to, as pointed out by the gentleman from Illinois (Mr. McCLORY) by some Members, which was a requirement that the Federal Government in all cases of innocent third party searches go through the same procedures more or less as in section 2, and in lieu thereof placing Attorney General guidelines which are a slight variation of those enacted by the Senate in lieu of a statutory requirement that these warrants be obtained only in a particular way.

Mr. DANIELSON. In other words, section 3 as it appears in the printed bill has been stricken in its entirety and a different section, including the guidelines to which the gentleman refers, has been substituted in its place?

Mr. KASTENMEIER. Yes, and the guidelines consist of a single page that I thought was available to the gentleman. I am sorry it was not earlier so that the gentleman could have had a chance to examine it more closely.

Mr. DANIELSON. Section 4 remains as it was, I gather.

Mr. KASTENMEIER. Yes, the remedy section, indeed, as offered by the gentleman from Illinois (Mr. HYDE) and supported by the gentleman from California remains intact.

Mr. DANIELSON. That would be both section 4 and section 5 relative to the Tort Claims Act.

Mr. KASTENMEIER. Yes, exactly.

Mr. DANIELSON. There is a definition in the bill, subsection (c) on page 10, line 4.

Mr. KASTENMEIER. In terms of the definition, page 2 of the committee amendment, consisting really of technical amendments offered by the gentleman from Ohio (Mr. KINDNESS) were accepted and modified very slightly the definition section. This is reflected on page 2.

Mr. DANIELSON. On page 10, there is a definition of "any other governmental unit", to which I refer.

Mr. KASTENMEIER. That remains unchanged.

Mr. DANIELSON. There is no language within the bill that I am aware of that refers to any other governmental unit, so I am bringing that to the attention of the gentleman. I think it may be only a technical error, bu I do not find any other use of that phrase within the bill.

Mr. KASTENMEIER. My memory is not precise on that point. I do not recall how the term is used.

Mr. DANIELSON. One other thing. This does restrict the right of not only Federal law enforcement officials, but it inhibits the right of State officials, county, municipal, or any others, as well, to use search warrants for evidentiary documentary material.

Mr. KASTENMEIER. Yes, as far as section 2 is concerned in terms of the first amendment, it always has been both a State and Federal bill.

Mr. DANIELSON. I thank the gentleman.

● Mr. QUAYLE. Mr. Speaker, I commend the House Judiciary Committee and my colleagues for completing action on H.R. 3486 the Documentary Materials Privacy Protection Act, a bill to remedy the Supreme Court's Zurcher against Stanford Daily decision, and bringing it to the floor.

I have worked to achieve just such a remedy since the Court ruled on this case on May 31, 1978. In this decision, the Court ruled that it is lawful to conduct surprise searches against a news organization, business, or private home even if the employees or occupants were innocent of wrongdoing.

This decision weakened the first and fourth amendments and intruded into the privacy not only of the media, but of all citizens.

On June 7, 1978, I introduced the Citizen Protection Act to mandate any law official use a subpena to gather information from a person who has "a reasonable expectation of privacy."

In making the decision, the Court specifically called for "congressional action to establish a nonconstitutional protection against possible abuses of the search warrant procedure."

Although the Zurcher case concerned a newspaper, the effect of the decision was much broader. In effect, every business, home, or office could be subject to a forcible entry and search even though none of the persons employed or residing there were suspected of a crime.

I do not argue that prosecutors and law enforcement officers should have the authority to gather evidence. My legislation, which is similar to that considered by the House, stated specifically that if a person is considered to be involved in a crime or if there is reasonable evidence that the material sought could be destroyed while the subpena is being sought, then other methods may be used.

However, I commend my colleagues for their steadfast support of freedom from unreasonable search and seizure. This freedom traces back to the colonial period when Samuel Adams drafted the "Rights of Colonists and the List of Infringements and Violations of Rights in 1772." By passing this bill we are in keeping with the great expectations of our forefathers.

It is the role of Congress to insure that the rights of all Americans are protected in 1980 as the framers of the Constitution intended in 1776. In passing this legislation we have carried out our duty to respond to the Court's challenge by mandating the use of the subpena rather than forced unannounced searches to innocent third parties.●

● Mr. KINDNESS. Mr. Speaker, I rise to contribute to the legislative history of H.R. 3486 which was considered earlier today.

During full committee markup, I raised several questions about certain words and phrases which were used in the bill because I felt that they lacked precision and thus could lead to confusion as to exactly what this bill protected and how law enforcement authorities were to comply with its provisions.

My first concern was the definition of "documentary materials." As stated in the bill, it seemed to be an attempt to give examples that related to the newsroom; yet, it failed to recognize the increasingly sophisticated means of recording information. The committee amendment includes a new definition which I believe more adequately reflects the modern-day meaning of "documents upon which information is recorded."

The second area of concern had to do with the phrase "the criminal offense for which the materials are sought." My question was "Sought for what?" I raised this and the previous question in a letter to Philip Heymann, Chief of the Criminal Division of the Department of Justice. I believe that my letter and his response, which are here submitted for the record, more fully explain my concern over this phraseology and the substitution, in the committee amendment, of the phrase "the criminal offense to which the materials relate."

HOUSE OF REPRESENTATIVES,
Washington, D.C., April 18, 1980.

Mr. PHILIP HEYMANN,
Assistant Attorney General, U.S. Department of Justice, Criminal Division, Washington, D.C.

DEAR PHIL: As you know, the House Judiciary Committee yesterday reported a bill intended to provide protection to newspersons and "innocent third parties" from searches such as that which prompted the Zurcher v. Stanford Daily case.

I am told that your division had quite a bit to do with the drafting of this legislation, and since the Committee was unable to answer my questions, I would like to pose them to you.

1. In the definition section, it is not at all clear to me what is meant by "tapes", "outtakes", and "interview files". Since video tapes are specifically mentioned, does "tapes" refer to just audio tapes? How about computer tapes? Isn't an "outtake" film or videotape? Is "interview file" a widely-accepted term of art in the news business and understood by law enforcement personnel so as to be a meaningful term to use? Isn't an "interview file" composed of written or printed material, audiotapes, photographs,

etc. (which are otherwise listed). Just what does this term mean?

2. In four instances in the bill, the following language appears: ". . . the offense for which the materials are sought . . .". Are the materials sought for the investigation of the criminal offense? the prosecution of that offense? The language of the bill implies that the materials would be sought for the commission of the crime—an obviously unintended grammatical error. Should steps be taken to negate inferences that the materials sought be relevant to the prosecution of the offense or must be admissible evidence?

I have some difficulties with this legislation in other respects; but if the bill passes into law in this form, I don't want to share the embarrassment of having done nothing to at least clear up the areas discussed in this letter. I would appreciate your support in formulating amendment language to be offered when the bill is considered by the House of Representatives. Your early attention to these questions would be most helpful and I hope to hear from you before the full House of Representatives takes up this bill.

Sincerely yours,

THOMAS N. KINDNESS,
Member of Congress.

U.S. DEPARTMENT OF JUSTICE,
Washington, D.C., June 9, 1980.

Hon. THOMAS N. KINDNESS,
House of Representatives,
Washington, D.C.

DEAR CONGRESSMAN KINDNESS: This is in response to the questions you raised concerning the language of certain provisions of H.R. 3486.

First, you are correct in noting that there is some overlap in the terms which are incorporated in the bill's definition of "documentary materials." It was intended that these terms serve as illustrations of the types of documentary materials which might be sought in a search coming within the scope of the bill as drafted by the Department of Justice for the Administration. They were not intended to be either all inclusive or mutually exclusive.

In light of the actions of the Committee in approving an expansion of the scope of the bill far beyond the area of First Amendment activities to which the bill was originally limited, the retention of these terms as illustrations of "documentary materials" may be out of place since they were examples of documentary materials likely to be held by those involved in First Amendment activities.

Your second question concerned the language "the offense for which the materials are sought." Perhaps this phrase could be clarified if it were amended to read "the offense to which the materials sought relate." Rule 41(b) of the Federal Rules of Criminal Procedure presently requires that materials sought by search bear a relationship to a particular criminal offense. Rule 41(b) provides:

"(b) Property Which May be Seized with a Warrant. A warrant may be issued under this rule to search for and seize any (1) property that constitutes evidence of the commission of a criminal offense; or (2) contraband, the fruits of crime, or things otherwise criminally possessed; or (3) property designed or intended for use or which is or has been used as a means of committing a criminal offense."

However, you are correct in suggesting that there should be no inference that the materials sought be admissible as evidence. Determinations of admissibility occur at suppression hearings and at trial. The question of the admissibility of the items to be seized as evidence at trial is not at issue at a warrant proceeding.

Since you expressed an interest in this legislation generally, I am enclosing a copy of the Attorney General's recent letter to the Chairman and members of the Senate Judiciary Committee concerning S. 1790, the Senate *Stanford Daily* bill.

Sincerely,

PHILIP B. HEYMANN,
Assistant Attorney General,
Criminal Division.

● Mr. HYDE. Mr. Speaker, I rise in reluctant support of this legislation. Since the moment it emerged from the Subcommittee on Courts, Civil Liberties, and the Administration of Justice, I opposed a provision then contained in section 3 of the bill and which was designed to extend the "subpena-first" rule to "all innocent third parties." At that time, I offered an amendment to strike that section and fully intended to join with my colleague from the other side, Mr. DANIELSON from the California, in offering an amendment on the floor to remove that portion of the bill. The Justice Department has since withdrawn its support for this amendment and so I will not offer it.

As has been stated, this legislation is principally designed to protect the public's right to know. It is not designed to make a sweeping change in constitutional law regarding the probable cause standard contained in the fourth amendment. In Zurcher against Stanford Daily, 436 U.S. 597 (1978), the Court held that the fourth amendment's minimal requirement for the issuance of a search warrant is probable cause to believe the evidence exists where you wish to search. Congress, of course, has the power to broaden and build upon that standard. This is what we have done with the creation of the "subpena first" rule now contained in the bill. By this procedure, law enforcement authorities must seek a subpena first before resorting to the issuance of a search warrant. Unfortunately, the sponsors of this legislation are not content to make changes which protect confidential informants from discovery pursuant to unannounced searches. They seek to extend this rule to "all third parties," including employees and relatives of criminals.

On March 31, 1980, Attorney General Benjamin Civiletti denounced the passage of H.R. 3486 with section 3 as a part thereof. Similarly, the other body was unable to pass its version of the bill with section 3 as a part thereof. Instead, guidelines have evolved and the Department of Justice has indicated a willingness to accept them. Apparently a compromise has been reached, the wisdom of which I am not yet convinced.

In my judgment there is no logical distinction between guidelines and the provisions of section 3. This bill is designed to protect the public's right to know, and in doing so to protect confidential sources whose identities may inadvertently be discovered during an unannounced search pursuant to a warrant. It is not designed to protect employees of organized crime and family members who may frequently serve as statutorily created sanctuaries in which previously accessible evidence can be stored indefinitely.

It is because I sincerely support the public's right to know and the protections provided in this bill to insure that right that I will support this bill. I hope the guidelines the Department seeks will not hinder the performance of its law enforcement responsibilities.●

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin (Mr. KASTENMEIER) that the House suspend the rules and pass the bill, H.R. 3486, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

The title was amended so as to read: "A bill to limit governmental search and seizure of documentary materials possessed by persons, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes."

A motion to reconsider was laid on the table.

House Resolution 749 was laid on the table.

□ 1630

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent for the immediate consideration of a similar Senate bill (S. 1790), entitled the "Privacy Protection Act of 1980."

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1790

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Privacy Protection Act of 1980".

TITLE I—FIRST AMENDMENT PRIVACY PROTECTION

PART A—UNLAWFUL ACTS

SEC. 101. (a) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize any work product materials possessed by a person reasonably believed to have a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense for which such materials are sought: *Provided, however,* That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense for which such materials are sought consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, of 798 of title 18, United States Code, or section 224, 225, or 227 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2277), or

section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783)); or

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(b) Notwithstanding any other law, it shall be unlawful for a government officer or employee, in connection with the investigation or prosecution of a criminal offense, to search for or seize documentary materials, other than work product materials, possessed by a person in connection with a purpose to disseminate to the public a newspaper, book, broadcast, or other similar form of public communication, in or affecting interstate or foreign commerce; but this provision shall not impair or affect the ability of any government officer or employee, pursuant to otherwise applicable law, to search for or seize such materials, if—

(1) there is probable cause to believe that the person possessing such materials has committed or is committing the criminal offense for which such materials are sought: *Provided, however,* That a government officer or employee may not search for or seize such materials under the provisions of this paragraph if the offense for which such materials are sought consists of the receipt, possession, communication, or withholding of such materials or the information contained therein (but such a search or seizure may be conducted under the provisions of this paragraph if the offense consists of the receipt, possession, or communication of information relating to the national defense, classified information, or restricted data under the provisions of section 793, 794, 797, or 798 of title 18, United States Code, or section 224, 225, or 227 of the Atomic Energy Act of 1954 (42 U.S.C. 2274, 2275, 2277), or section 4 of the Subversive Activities Control Act of 1950 (50 U.S.C. 783));

(2) there is reason to believe that the immediate seizure of such materials is necessary to prevent the death of, or serious bodily injury to, a human being.

(3) there is reason to believe that the giving of notice pursuant to a subpena duces tecum would result in the destruction, alteration, or concealment of such materials; or

(4) such materials have not been produced in response to a court order directing compliance with a subpena duces tecum, and—

(A) all appellate remedies have been exhausted; or

(B) there is reason to believe that the delay in an investigation or trial occasioned by further proceedings relating to the subpena would threaten the interests of justice.

(c) In the event a search warrant is sought pursuant to paragraph (4)(B) of subsection (b), the person possessing the materials shall be afforded adequate opportunity to submit an affidavit setting forth the basis for any contention that the materials sought are not subject to seizure.

PART B—REMEDIES, EXCEPTIONS, AND DEFINITIONS

SEC. 105. This Act shall not impair or affect the ability of a government officer or employee, pursuant to otherwise applicable law, to conduct searches and seizures at the borders of, or at international points of, entry into the United States in order to enforce the customs laws of the United States.

SEC. 106. (a) A person aggrieved by a search for or seizure of materials in violation of this Act shall have a civil cause of action for damages for such search or seizure—

(1) against the United States, against a State which has waived its sovereign immunity under the Constitution to a claim for damages resulting from a violation of this Act, or against any other governmental unit, all of which shall be liable for violations of this Act by their officers or employees while acting within the scope or under color of their office or employment; and

(2) against an officer or employee of a State who has violated this Act while acting within the scope or under color of his office or employment, if such State has not waived its sovereign immunity as provided in paragraph (1).

(b) It shall be a complete defense to a civil action brought under paragraph (2) of subsection (a) that the officer or employee had a reasonable good faith belief in the lawfulness of his conduct.

(c) The United States, a State, or any other governmental unit liable for violations of this Act under subsection (a)(1), may not assert as a defense to a claim arising under this Act the immunity of the officer or employee whose violation is complained of or his reasonable good faith belief in the lawfulness of his conduct, except that such a defense may be asserted if the violation complained of is that of a judicial officer.

(d) The remedy provided by subsection (a)(1) against the United States, a State, or any other governmental unit is exclusive of any other civil action or proceeding for conduct constituting a violation of this Act, against the officer or employee whose violation gave rise to the claim, or against the estate of such officer or employee.

(e) Evidence otherwise admissible in a proceeding shall not be excluded on the basis of a violation of this Act.

(f) A person having a cause of action under this section shall be entitled to recover actual damages but not less than liquidated damages of $1,000, such punitive damages as may be warranted, and such reasonable attorneys' fees and other litigation costs reasonably incurred as the court, in its discretion, may award: *Provided, however,* That the United States, a State, or any other governmental unit shall not be liable for interest prior to judgment.

(g) The Attorney General may settle a claim for damages brought against the United States under this section, and shall promulgate regulations to provide for the commencement of an administrative inquiry following a determination of a violation of this Act by an officer or employee of the United States and for the imposition of administrative sanctions against such officer or employee, if warranted.

(h) The district courts shall have original jurisdiction of all civil actions arising under this section.

SEC. 107. (a) "Documentary materials", as used in this Act, means materials upon which information is recorded, and includes, but is not limited to, written or printed materials, photographs, tapes, videotapes, negatives, films, out-takes, and interview files, but does not include contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used as, the means of committing a criminal offense.

(b) "Work product materials", as used in this Act, means materials, other than contraband or the fruits of a crime or things otherwise criminally possessed, or property designed or intended for use, or which is or has been used, as the means of committing a criminal offense, and—

(1) in anticipation of communicating such materials to the public, are prepared, produced, authored, or created, whether by the person in possession of the materials or by a person other than the person in possession of the materials;

(2) are possessed for the purposes of communicating such materials to the public; and

(3) include mental impressions, conclusions, opinions, or theories of the person who prepared, produced, authorized, or created such material.

(c) "Any other governmental unit", as used in this Act, includes the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, and any local government, unit of local government, or any unit of State government.

SEC. 108. The provisions of this title shall become effective on October 1, 1980, except that insofar as such provisions are applicable to a State or any governmental unit other than the United States, the provisions of this title shall become effective one year from the date of enactment of this Act.

TITLE II—ATTORNEY GENERAL GUIDELINES

SEC. 201. (a) The Attorney General shall, within six months of the date of enactment of this Act, issue guidelines for the procedures to be employed by any Federal officer or employee, in connection with the investigation or prosecution of a criminal offense, to obtain documentary materials in the private possession of a person when the person is not reasonably believed to be a suspect in such offense or related by blood or marriage to such a suspect, and when the materials are sought are not contraband or the fruits or instrumentalities of an offense. The Attorney General shall incorporate in such guidelines—

(1) a recognition of the personal privacy interests of the person in possession of such documentary materials;

(2) a requirement that the least intrusive method or means of obtaining such materials be used which do not substantially jeopardize the availability or usefulness of the materials sought to be obtained; and

(3) a recognition of special concern for privacy interests in cases in which a search or seizure for such documents would intrude upon a known confidential relationship.

(b) The Attorney General shall collect and compile information on, and report annually to the Committees on the Judiciary of the Senate and the House of Representatives on, the use of search warrants by Federal officers or employees for documentary materials described in subsection (a)(3).

(c) An issue relating to the compliance, or to the failure to comply, with guidelines issued pursuant to this section may not be litigated, and a court may not entertain such an issue as a basis for the suppression or exclusion of evidence.

MOTION OFFERED BY MR. KASTENMEIER

Mr. KASTENMEIER. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. KASTENMEIER moves to strike out all after the enacting clause of the Senate bill, S. 1790, and to insert in lieu thereof the provisions of H.R. 3486, as passed.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "A bill to limit governmental search and seizure of documentary materials possessed by persons, to provide a remedy for persons aggrieved by violations of the provisions of this act, and for other purposes.".

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3486) was laid on the table.

APPOINTMENT OF CONFEREES ON S. 1790

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that the House insist on its amendment to the Senate bill and request a conference with the Senate thereon.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin? The Chair hears none and, without objection, appoints the following conferees: Messrs. KASTENMEIER, DANIELSON, MAZZOLI, HARRIS, GUDGER, CARR, RAILSBACK, SAWYER, and MOORHEAD of California.

There was no objection.

GENERAL LEAVE

Mr. KASTENMEIER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks on the bill, H.R. 3486, just considered.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

HOSTAGE RELIEF ACT OF 1980

Mr. FASCELL. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 7085), to provide certain benefits to individuals held hostage in Iran and to similarly situated individuals, and for other purposes as amended.

The Clerk read as follows:

H.R. 7085

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Hostage Relief Act of 1980".

TITLE I—SPECIAL PERSONNEL BENEFITS

DEFINITIONS

SEC. 101. For the purposes of this title—

(1) The term "American hostage" means any individual who, while—

(A) in the civil service or the uniformed services of the United States, or

(B) a citizen or resident alien of the United States rendering personal service to the United States abroad similar to the service of a civil officer or employee of the United States (as determined by the Secretary of State),

is placed in a captive status during the hostage period.

(2) The term "hostage period" means the period beginning on November 4, 1979, and ending on the later of—

(A) the date the President specifies, by Executive order, as the date on which all citizens and resident aliens of the United States who were placed in a captive status due to the seizure of the United States Embassy in Iran have been returned to the United States or otherwise accounted for, or

(B) January 1, 1983.

(3) The term "family member", when used with respect to any American hostage, means—

(A) any dependent (as defined in section 5561 of title 5, United States Code) of such hostage; and

(B) any member of the hostage's family or household (as determined under regulations which the Secretary of State shall prescribe).

(4) The term "captive status" means a missing status arising because of a hostile action abroad—

(A) which is directed against the United States during the hostage period; and

(B) which is identified by the Secretary of State in the Federal Register.

(5) The term "missing status"—

(A) in the case of employees, has the meaning given it in section 5561(5) of title 5, United States Code;

(B) in the case of members of the uniformed services, has the meaning given it in section 551(2) of title 37, United States Code; and

(C) in the case of other individuals, has a similar meaning as that provided under such sections, as determined by the Secretary of State.

(6) The terms "pay and allowances", "employee", and "agency" have the meanings given to such terms in section 5561 of title 5, United States Code, and the terms "civil service", "uniformed services", and "armed forces" have the meanings given to such terms in section 2101 of such title 5.

PAY AND ALLOWANCES MAY BE ALLOTTED TO SPECIAL SAVINGS FUND

SEC. 102. (a) The Secretary of the Treasury shall establish a savings funds to which the head of an agency may allot all or any portion of the pay and allowances of any American hostage which are for pay periods during which the American hostage is in a captive status and which are not subject to an allotment under section 5563 of title 5, United States Code, under section 553 of title 37, United States Code, or under any other provision of law.

(b) Amounts so allotted to the savings fund shall bear interest at a rate which, for any calendar quarter, shall be equal to the average rate paid on United States Treasury bills with three-month maturities issued during the preceding calendar quarter. Such interest shall be compounded quarterly.

(c) Amounts may be allotted to the savings fund from pay and allowances for any pay period ending after November 4, 1979, and before the establishment of the savings fund. Interest on amounts allotted from the pay and allowances for any such pay period shall be calculated as if the allotment had occurred at the end of the pay period.

(d) Amounts in the savings fund credited to any American hostage shall be considered as pay and allowances for purposes of section 5563 of title 5, United States Code, (or in the case of a member of the uniformed services, for purposes of section 553 of title 37, United States Code) and shall otherwise be subject to withdrawal under procedures which the Secretary of the Treasury shall establish.

MEDICAL AND HEALTH CARE AND RELATED EXPENSES

SEC. 103. Under regulations prescribed by the President, the head of an agency may pay (by advancement or reimbursement) any individual who is an American hostage, or any family member of such an individual, for medical and health care, and other expenses related to such care, to the extent such care—

(1) is incident to that individual being an American hostage; and

(2) is not covered by insurance.

EDUCATION AND TRAINING

SEC. 104. (a)(1) Under regulations prescribed by the President, the head of an agency shall pay (by advancement or reimbursement) a spouse or child of an American hostage for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution.

(2) Except as provided in paragraph (3), payments shall be available under this subsection for a spouse or child of an individual who is an American hostage for education or training which occurs—

(A) after the ninetieth day after the date the individual is placed in a captive status, and

(B) on or before—

(i) the end of any semester or quarter (as appropriate) which begins before the date on which the hostage ceases to be in a captive status, or

(ii) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the 12-week period following that date.

In order to respond to special circumstances, the President may specify a date for purposes of cessation of assistance under subparagraph (B) which is later than the date which would otherwise apply under subparagraph (B).

(3) In the event an American hostage dies and the death is incident to that individual being an American hostage, payments shall be available under this subsection for a spouse or child of an individual who is an American hostage for education or training which occurs after the date of death.

(4) The preceding provisions of this subsection shall not apply with respect to any spouse or child who is eligible for assistance under chapter 35 of title 38, United States Code.

(b)(1) In order to respond to special circumstances, the head of an agency may, under regulations prescribed by the President, pay (by advancement or reimbursement) an American hostage for expenses incurred for subsistence, tuition, fees, supplies, books, and equipment, and other educational expenses, while attending an educational or training institution.

(2) Payments shall be available under this subsection for an American hostage for education or training which occurs—

(A) after the termination of such hostage's captive status, and

(B) on or before—

(i) the end of any semester or quarter (as appropriate) which begins before the date which is 10 years after the day on which the hostage ceases to be in a captive status, or

(ii) if the educational or training institution is not operated on a semester or quarter system, the earlier of the end of any course which began before such date or the end of the 12-week period following that date.

(c) Assistance under this section shall be discontinued for any individual whose conduct or progress is unsatisfactory under standards consistent with those established pursuant to section 1724 of tietle 38, United States Code.

(d) In no event may assistance be provided under this section for any individual for a period in excess of 45 months (or the equivalent thereof in part-time education or training).

(e) Regulations prescribed by the President under this section shall provide that the program under this section be consistent with the assistance program under chapters 35 and 36 of title 38, United States Code.

EXTENSION OF APPLICABILITY OF CERTAIN BENEFITS OF THE SOLDIERS' AND SAILORS' CIVIL RELIEF ACT OF 1940

SEC. 105. (a) Under regulations prescribed by the President, an American hostage is entitled to the benefits provided by the Soldiers' and Sailors' Civil Relief Act of 1940 (40 U.S.C. App. 501 et seq.), including the benefits provided by section 701 (50 U.S.C. App. 591) but excluding the benefits provided by sections 104, 105, 106, 400 through 408, 501 through 512, and 514 (50 U.S.C. App. 514, 515, 516, 540 through 548, 561 through 572, and 574).

(b) In applying such Act for purposes of this section—

(1) the term "person in the military service" is deemed to include any such American hostage;

(2) the term "period of military service" is deemed to include the period during which such American hostage is in a captive status; and

(3) references to the Secretary of the Army, the Secretary of the Navy, the Ad-

jutant General of the Army, the Chief of Naval Personnel, and the Commandant, United States Marine Corps, are deemed to be references to the Secretary of State.

(c) The preceding provisions of this section shall not apply with respect to any American hostage covered by such provisions of the Soldiers' and Sailors' Civil Relief Act of 1940 by reason of being in the armed forces.

APPLICABILITY TO COLUMBIAN HOSTAGE

SEC. 106. Notwithstanding the requirements of section 101(1), for purposes of this title, Richard Starr of Edmonds, Washington, who, as a Peace Corps volunteer, was held captive in Columbia and released on or about February 10, 1980, shall be held and considered to be an American hostage placed in a captive status on November 4, 1979.

EFFECTIVE DATE

SEC. 107. The preceding provisions of this title shall take effect as of November 4, 1979.

TITLE II—TAX PROVISIONS

SEC. 201. COMPENSATION EXCLUDED FROM GROSS INCOME.

For purposes of the Internal Revenue Code of 1954, the gross income of an individual who was at any time an American hostage does not include compensation from the United States received for any month during any part of which such individual was—

(1) in captive status, or

(2) hospitalized as a result of such individual's captive status.

SEC. 202. INCOME TAXES OF HOSTAGES WHERE DEATH RESULTS FROM CAPTIVE STATUS.

(a) GENERAL RULE.—In the case of an individual who was at any time an American hostage and who dies as a result of injury or disease or physical or mental disability incurred or aggravated while such individual was in captive status—

(1) any tax imposed by subtitle A of the Internal Revenue Code of 1954 shall not apply with respect to—

(A) the taxable year in which falls the date of such individual's death, or

(B) any prior taxable year ending on or after the first day such individual was in captive status, and

(2) any tax imposed under such subtitle A for taxable years preceding those specified in paragraph (1) which is unpaid at the date of such individual's death (including interest, additions to the tax, and additional amounts)—

(A) shall not be assessed,

(B) if assessed, the assessment shall be abated, and

(C) if collected, shall be credited or refunded as an overpayment.

(b) DEATH MUST OCCUR WITHIN 2 YEARS OF CESSATION OF CAPTIVE STATUS.—This section shall not apply unless the death of the individual occurs within 2 years after such individual ceases to be in captive status.

SEC. 203. SPOUSE MAY FILE JOINT RETURN.

(a) GENERAL RULE.—If an individual is an American hostage who is in captive status, such individual's spouse may elect to file a joint return under section 6013(a) of the Internal Revenue Code of 1954 for any taxable year—

(1) which begins on or before the day which is 2 years after the date on which the hostage period ends, and

(2) for which such spouse is otherwise entitled to file such a joint return.

(b) CERTAIN RULES MADE APPLICABLE.—For purposes of subsection (a), paragraphs (2) and (4) of section 6013(f) of such Code (relating to joint return where individual is in missing status) shall apply as if the election described in subsection (a) of this section were an election described in paragraph (1) of such section 6013(f).

SEC. 204. TIME FOR PERFORMING CERTAIN ACTS POSTPONED BY REASON OF CAPTIVE STATUS.

(a) GENERAL RULE.—In the case of any individual who was at any time an American hostage, any period during which he was in captive status (and any period during which he was outside the United States and hospitalized as a result of captive status), and the next 180 days thereafter, shall be disregarded in determining, under the internal revenue laws, in respect of any tax liability (including any interest, penalty, additional amount, or addition to the tax) of such individual—

(1) whether any of the acts specified in paragraph (1) of section 7508(a) of the Internal Revenue Code of 1954 was performed within the time prescribed therefor, and

(2) the amount of any credit or refund (including interest).

(b) APPLICATION TO SPOUSE.—The provisions of this section shall apply to the spouse of any individual entitled to the benefits of subsection (a). The preceding sentence shall not cause this section to apply to any spouse for any taxable year beginning more than 2 years after the date on which the hostage period ends.

(c) Section 7508(d) MADE APPLICABLE.—Subsection (d) of section 7508 of the Internal Revenue Code of 1954 shall apply to subsection (a) in the same manner as if the benefits of subsection (a) were provided by subsection (a) of such section 7508.

SEC. 205. DEFINITIONS AND SPECIAL RULES.

(a) AMERICAN HOSTAGE.—For purposes of this title, the term "American hostage" means any individual who, while—

(1) in the civil service or the uniformed services of the United States, or

(2) a citizen or resident alien of the United States rendering personal service to the United States abroad similar to the service of a civil officer or employee of the United States (as determined by the Secretary of State),

is placed in a captive status during the hostage period.

(b) HOSTAGE PERIOD.—For purposes of this title, the term "hostage period" means the period beginning on November 4, 1979, and ending on whichever of the following dates is the earlier:

(1) the date the President specifies, by Executive order, as the date on which all citizens and resident aliens of the United States who were placed in a captive status due to the seizure of the United States Embassy in Iran have been returned to the United States or otherwise accounted for, or

(2) December 31, 1981.

(c) CAPTIVE STATUS.—For purposes of this title—

(1) IN GENERAL.—The term "captive status" means a missing status arising because of a hostile action abroad—

(A) which is directed against the United States during the hostage period, and

(B) which is identified by the Secretary of State in the Federal Register.

(2) MISSING STATUS DEFINED.—The term "missing status"—

(A) in the case of employees, has the meaning given it in section 5561(5) of title 5, United States Code,

(B) in the case of members of the uniformed services, has the meaning given it in section 551(2) of title 37, United States Code, and

(C) in the case of other individuals, has a similar meaning as that provided under such sections, as determined by the Secretary of State.

For purposes of the preceding sentence, the term "employee" has the meaning given to such term by section 5561(2) of title 5, United States Code.

(d) HOSPITALIZED AS A RESULT OF CAPTIVE STATUS.—

(1) IN GENERAL.—For purposes of this title, an individual shall be treated as hospitalized as a result of captive status if such individual is hospitalized as a result of injury or disease or physical or mental disability incurred or aggravated while such individual was in captive status.

(2) 2-YEAR LIMIT.—Hospitalization shall be taken into account for purposes of paragraph (1) only if it is hospitalization—

(A) occurring on or before the day which is 2 years after the date on which the individual's captive status ends (or, if earlier, the date on which the hostage period ends), or

(B) which is part of a continuous period of hospitalization which began on or before the day determined under subparagraph (A).

(c) CIVIL SERVICE; UNIFORMED SERVICES.—For purposes of this section, the terms "civil service" and "uniformed services" have the meanings given to such terms by section 2101 of title 5, United States Code.

(f) APPLICATION OF TITLE TO ALL TEHRAN HOSTAGES.—In the case of any citizen or resident alien of the United States who is determined by the Secretary of State to have been held hostage in Tehran at any time during November 1979, for purposes of this title—

(1) such individual shall be treated as an American hostage whether or not such individual meets the requirements of paragraph (1) or (2) of subsection (a), and

(2) if such individual was not in the civil service or the uniformed services of the United States—

(A) section 201 shall be applied by substituting "earned income (as defined in section 911(b) of the Internal Revenue Code of 1954) attributable to" for "compensation from the United States received for", and

(B) the amount excluded from gross income under section 201 for any month shall not exceed the monthly equivalent of the annual rate of basic pay payable for level V of the Executive Schedule.

(g) APPLICATION OF TITLE TO INDIVIDUAL HELD CAPTIVE IN COLOMBIA.—For purposes of this title, Richard Starr of Edmonds, Washington, who, as a Peace Corps volunteer, was held captive in Colombia, shall be treated as an American hostage who was in captive status beginning on November 4, 1979, and ending on February 10, 1980.

(h) SPECIAL RULES.—

(1) COMPENSATION.—For purposes of this title, the term "compensation" shall not include any amount received as an annuity or as retirement pay.

(2) WAGE WITHHOLDING.—Any amount excluded from gross income under section 201 shall not be treated as wages for purposes of chapter 24 of the Internal Revenue Code of 1954.

SEC. 206. STUDY OF TAX TREATMENT OF HOSTAGES.

(a) STUDY.—The Chief of Staff of the Joint Committee on Taxation shall study all aspects of the tax treatment of citizens and resident aliens of the United States who are taken hostage or are otherwise placed in a missing status.

(b) REPORT.—The Chief of Staff of the Joint Committee on Taxation shall, before July 1, 1981, report the results of the study made pursuant to subsection (a) to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate.

TITLE III—TREATMENT OF THE HOSTAGES IN IRAN

VISITS BY THE INTERNATIONAL RED CROSS

SEC. 301. (a) The Congress finds that—

(1) the continued illegal and unjustified detention of the American hostages by the Government of Iran has resulted in the deterioration of relations between the United States and Iran; and